・Cases where a guardian who has actual custody of a child takes advantage of his/her position of power and has intercourse with a child under the age of 18 are regarded as a new type of crime and are treated similarly to the crime of forced sexual intercourse.

・Cases where a guardian, takes advantage of his/her position of power and subjects a child under the age of 18 to an act of indecency are also treated similarly to the crime of forcible indecency.

(3) Amendment to the crime of rape at the scene of a robbery (Article 241):

・The stipulation of robbers being punished, particularly heavily, in cases where they also committed rape, was changed, and cases of rapists committing robbery were treated equivalently.

(4) Making all sexual offenses a crime that is prosecutable without a victim complaint:

・The stipulation that victims of rape and forced indecency were required to press charges themselves was revised, enabling criminals to be prosecuted, without victims having to press charges.

3. The government also decided to review the actual circumstances of sexual offenses and the state of enforcement of the amendment, and so forth, three years after the amendment's enactment, and to take the required measures if adopting countermeasures in line with the actual state of crimes was deemed necessary.

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3. Establishing Fair Disclosure Rules in Japan

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1. Background

In the past, the timely disclosure rules of US stock exchanges were such that issuers could disclose information selectively to certain securities market professionals. Concerned that such selective disclosure was unfair, the US Securities and Exchange Commission (SEC) established Regulation Fair Disclosure (FD) in 2000. Regulation FD provides that whenever an issuer discloses any material nonpublic information to certain enumerated persons (e.g., securities market professionals), the issuer must publicly disclose the information, "simultaneously" in the case of an intentional disclosure, and "promptly" in the case of a non-intentional disclosure. Thus, if issuers selectively disclose information, they fall foul of Regulation FD.

In the EU, timely disclosure and selective disclosure were regulated under the 2006 Market Abuse Directive (MAD), and the member states incorporated the directive into their national laws. MAD was subsequently repealed and replaced by the Market Abuse Regulation (MAR), which became directly applicable in member states in July 2016.

As for Japan, the timely disclosure rules established by financial instruments exchanges require listed companies to disclose material information promptly whenever such information arises. In practice, however, companies would only disclose such information once their "decision-making body" had given the go-ahead, and until that point, they were able to disclose information selectively. In 2015 and 2016, there were two securities companies that became subject to administrative action; these companies had disclosed nonpublic information on a listed company's quarterly performance to clients with a view to soliciting stock trading. These cases were problematic because the listed companies had granted personnel from these securities companies exclusive access to their nonpublic quarterly performance information. As in the US and the EU, these cases prompted Japan to consider taking rigorous action against selective disclosure. In 2017, the Diet passed an amendment to the Financial Instruments and Exchange Act, introducing regulations on selective disclosure (Act No. 49 of 2017). These provisions are dubbed the FD Rules.

2. Obligation to Publicly Disclose

To summarize the FD Rules, whenever a listed company's executives, agents, employees, or other personnel (collectively, "executive[s]") disclose material information to a "transaction-related party," they must simultaneously make a public disclosure of the said information (Article

27-36, Paragraph 1, Financial Instruments and Exchange Act). "Material information" is defined as important unpublished information about operations, business, or assets of the listed company that would have an important impact on an investment decision (Article 27-36, Paragraph 1). Material information subject to the FD Rules is more broadly construed than material facts that are subject to insider trading regulations, the latter being defined as any facts that would have a prominent impact on an investment decision. In addition, unlike material facts, material information does not have to meet the (im)materiality criteria. As to the reason for this broader construal, information that the company's "decision-making body" has not yet cleared for disclosure (such as financial statements that the board of directors has not yet approved) would not constitute material facts subject to insider trading regulations; it would, nevertheless, be considered important by an investor in making an investment decision, and as such, it should fall under the FD Rules.

The obligation to publicly disclose arises the moment that an executive discloses information to a transaction-related party. Those who constitute a "transaction-related party" are limited to (i) those whose business it is to furnish third parties with analyses of securities-related transactions, financial data, and the like (such as financial instrument and exchange operators, registered financial institutions, and credit rating agencies), and (ii) those specified in a Cabinet Office ordinance as persons who receive material information in connection with a listed company's investor relations activities and who are likely to trade in the securities of that listed company on the basis of such information. Disclosing parties are limited to the listed company's executives and anyone in the company whose job is to disclose information to transaction-related parties (i.e., investor relations staff). Disclosing information to a news media outlet will not invoke obligations under the FD Rules; this is because a news media outlet accesses information from listed companies for news broadcasting purposes. Likewise, the FD Rules' obligations will not be invoked if the recipient of the information is bound by an agreement obliging the recipient to refrain from divulging the information to a third party or from making an investment decision on the basis of the information (proviso in Article 27-36, Paragraph 1). A typical example of such disclosure arises where a listed company consults with a financial instrument and exchange operator over fund raisings. That said, if the listed company learns that the recipient has violated the agreement by either divulging the information to a third party or making an investment decision on the basis of the information, the company must make a public disclosure promptly (Article 27-36, Paragraph 3).

The FD Rules also provide for cases of "non-intentional disclosure." Specifically, if a listed company's executive has disclosed material information to a transaction-related party without knowing at the time that the information was material information or that the recipient was a transaction-related party, or if the information was communicated as a result of negligence, the company does not need to publicly disclose the information simultaneously, provided that the company makes a public disclosure promptly after it learns of the non-intentional disclosure (Article 27-36, Paragraph 2).

Regarding the method of public disclosure, the FD Rules provide that listed companies may submit a current report to the Financial Services Agency or post the information on the timely disclosure webpage of the relevant exchange. Listed companies may also post the information on their own websites (Article 27-36, Paragraph 4). However, posting the information on social networking sites does not qualify as public disclosure.

3. Enforcement

There is a risk that rigorously enforcing a prohibition on selective disclosure will deter listed companies from disclosing information (e.g., they may stop complying with securities market professionals' requests for access), and as a result, the efficient price formation process in the markets would be impaired. Because of such concerns, there was vocal opposition to the FD Rules. As a compromise, a decision was taken to follow the example of the US and the EU, and the FD Rules were drafted in such a way that companies in violation of the rules would be subject, not to direct fines or civil penalties, but to administrative actions.

If the prime minister (whose authority is delegated to the commissioner of the Financial Services Agency) deems that a listed company has failed to publicly disclose material information that it was obliged to under the FD Rules, he or she may advise the company to publicly disclose the material information and to take any other measures as may be appropriate. If the company then declines, without a valid reason, to take the advised measures, the prime minister may order the company to take the said measures (Article 27-38, Paragraphs 1 & 2). It is only once a company violates such an order that it will be subject to penalties (Article 205, Item 6-5).

Thus, the FD Rules are not intended to prohibit dialogues between listed companies and securities markets professionals. Rather, the purpose is to stamp out selective disclosure of information, to ensure that investors at large can have confidence in the information that listed companies issue, and to encourage listed companies to disclose information early. In light of this purpose, it is imperative that listed companies, for their part, develop best practice models for voluntary information disclosure.

(on January 18, 2018)